

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

# HOUSE BILL 2062

AN ACT

AMENDING SECTIONS 38-711, 38-714, 38-742 AND 38-765, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-711, Arizona Revised Statutes, is amended to  
3 read:

4 38-711. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Active member" means a member as defined in paragraph 23,  
7 subdivision (b) of this section who satisfies the eligibility criteria  
8 prescribed in section 38-727 and who is currently making member contributions  
9 as prescribed in section 38-736.

10 2. "Actuarial equivalent" means equality in value of the aggregate  
11 amounts expected to be received under two different forms of payment, based  
12 on mortality and interest rate assumptions approved from time to time by the  
13 board.

14 3. "ASRS" means the Arizona state retirement system established by  
15 this article.

16 4. "Assets" means the resources of ASRS including all cash,  
17 investments or securities.

18 5. "Average monthly compensation" means:

19 (a) For a member whose membership in ASRS commenced before January 1,  
20 1984 and who left the member's contributions on deposit or reinstated  
21 forfeited credited service pursuant to section 38-742 for a period of  
22 employment that commenced before January 1, 1984, AT THE MEMBER'S ELECTION  
23 EITHER:

24 (i) THE MONTHLY AVERAGE OF COMPENSATION THAT IS CALCULATED PURSUANT TO  
25 SUBDIVISION (b) OF THIS PARAGRAPH.

26 (ii) The monthly average of compensation on which contributions were  
27 remitted during a period of sixty consecutive months during which the member  
28 receives the highest compensation within the last one hundred twenty months  
29 of credited service. Any month for which no contributions are reported to  
30 ASRS or that falls within a period of nonpaid or partially paid leave of  
31 absence or sabbatical leave shall be excluded from the computation. The  
32 sixty consecutive months may entirely precede, may be both before and after  
33 or may be completely after any excluded months. If the member was employed  
34 for less than sixty consecutive months, the average monthly compensation is  
35 based on the total consecutive months worked. Payments for accumulated  
36 vacation or annual leave, sick leave, compensatory time or other forms of  
37 termination pay which, ~~prior to the effective date of the amendment to this~~  
38 ~~section~~ BEFORE AUGUST 12, 2005, constitute compensation for members whose  
39 membership in ASRS commenced before January 1, 1984, do not cease to be  
40 included as compensation if paid in the form of nonelective employer  
41 contributions under a 26 United States Code section 403(b) plan ~~so long as~~ IF  
42 all payments of employer and employee contributions are made at the time of  
43 termination. Contributions shall be made to ASRS on these amounts pursuant  
44 to sections 38-735, 38-736 and 38-737.

1 (b) ~~Effective July 1, 1985~~ FOR A MEMBER WHOSE MEMBERSHIP IN ASRS  
2 COMMENCED ON OR AFTER JANUARY 1, 1984 BUT BEFORE JULY 1, 2009. The monthly  
3 average of compensation on which contributions were remitted during a period  
4 of thirty-six consecutive months during which a member receives the highest  
5 compensation within the last one hundred twenty months of credited service.  
6 Any month for which no contributions are reported to ASRS or that falls  
7 within a period of nonpaid or partially paid leave of absence or sabbatical  
8 leave shall be excluded from the computation. The thirty-six consecutive  
9 months may entirely precede, may be both before and after or may be  
10 completely after any excluded months. If the member was employed for less  
11 than thirty-six consecutive months, the average monthly compensation shall be  
12 based on the total consecutive months worked. ~~This subdivision applies only~~  
13 ~~to members whose membership in ASRS was effective after December 31, 1983 or~~  
14 ~~who agree in writing as a binding condition of eligibility for being granted~~  
15 ~~the benefit advantages available under this subdivision to have their benefit~~  
16 ~~computed on the basis of the definition of compensation.~~

17 (c) FOR A MEMBER WHOSE MEMBERSHIP IN ASRS COMMENCED ON OR AFTER JULY  
18 1, 2009, THE MONTHLY AVERAGE OF COMPENSATION ON WHICH CONTRIBUTIONS WERE  
19 REMITTED DURING A PERIOD OF SIXTY CONSECUTIVE MONTHS DURING WHICH A MEMBER  
20 RECEIVES THE HIGHEST COMPENSATION WITHIN THE LAST ONE HUNDRED TWENTY MONTHS  
21 OF CREDITED SERVICE. ANY MONTH FOR WHICH NO CONTRIBUTIONS ARE REPORTED TO  
22 ASRS OR THAT FALLS WITHIN A PERIOD OF NONPAID OR PARTIALLY PAID LEAVE OF  
23 ABSENCE OR SABBATICAL LEAVE SHALL BE EXCLUDED FROM THE COMPUTATION. THE  
24 SIXTY CONSECUTIVE MONTHS MAY ENTIRELY PRECEDE, MAY BE BOTH BEFORE AND AFTER  
25 OR MAY BE COMPLETELY AFTER ANY EXCLUDED MONTHS. IF THE MEMBER WAS EMPLOYED  
26 FOR LESS THAN SIXTY CONSECUTIVE MONTHS, THE AVERAGE MONTHLY COMPENSATION  
27 SHALL BE BASED ON THE TOTAL CONSECUTIVE MONTHS WORKED.

28 6. "Board" means the ASRS board established in section 38-713.

29 7. "Compensation" means the gross amount paid to a member by an  
30 employer as salary or wages, including amounts that are subject to deferred  
31 compensation or tax shelter agreements, for services rendered to or for an  
32 employer, or that would have been paid to the member except for the member's  
33 election or a legal requirement that all or part of the gross amount be used  
34 for other purposes, but does not include amounts paid in excess of  
35 compensation limits established in section 38-746. Compensation includes  
36 amounts paid as salary or wages to a member by a second employer.  
37 Compensation, as provided in paragraph 5, subdivision (b) OR (c) of this  
38 section, does not include:

39 (a) Lump sum payments, on termination of employment, for accumulated  
40 vacation or annual leave, sick leave, compensatory time or any other form of  
41 termination pay whether the payments are made in one payment or by  
42 installments over a period of time.

43 (b) Damages, costs, attorney fees, interest or other penalties paid  
44 pursuant to a court order or a compromise settlement or agreement to satisfy  
45 a grievance or claim even though the amount of the payment is based in whole

1 or in part on previous salary or wage levels, except that, if the court order  
2 or compromise settlement or agreement directs salary or wages to be paid for  
3 a specific period of time, the payment is compensation for that specific  
4 period of time. If the amount directed to be paid is less than the actual  
5 salary or wages that would have been paid for the period if service had been  
6 performed, the contributions for the period shall be based on the amount of  
7 compensation that would have been paid if the service had been performed.

8 (c) Payment, at the member's option, in lieu of fringe benefits that  
9 are normally paid for or provided by the employer.

10 (d) Merit awards pursuant to section 38-613 and performance bonuses  
11 paid to assistant attorneys general pursuant to section 41-192.

12 8. "Contingent annuitant" means the person named by a member to  
13 receive retirement income payable following a member's death after retirement  
14 as provided in section 38-760.

15 9. "Credited service" means, subject to section 38-739, the number of  
16 years standing to the member's credit on the books of ASRS during which the  
17 member made the required contributions.

18 10. "Current annual compensation" means the greater of:

19 (a) Annualized compensation of the ~~full~~ TYPICAL pay period AMOUNT  
20 immediately before the date of a request to ASRS to purchase credited service  
21 pursuant to section 38-743, 38-744 or 38-745. THE TYPICAL PAY PERIOD AMOUNT  
22 SHALL BE DETERMINED BY TAKING THE FIVE PAY PERIODS IMMEDIATELY PRIOR TO THE  
23 DATE OF REQUEST, DISREGARDING THE HIGHEST AND LOWEST COMPENSATION AMOUNT PAY  
24 PERIODS AND AVERAGING THE THREE REMAINING PAY PERIODS.

25 (b) Annualized compensation of the partial year, DISREGARDING THE  
26 FIRST COMPENSATION AMOUNT PAY PERIOD, if the member has less than twelve  
27 months total credited service on the date of a request to purchase credited  
28 service pursuant to section 38-743, 38-744 or 38-745.

29 (c) The sum of the twelve months of compensation immediately before  
30 the date of a request to ASRS to purchase credited service pursuant to  
31 section 38-743, 38-744 or 38-745.

32 (d) The sum of the thirty-six months of compensation immediately  
33 before the date of a request to ASRS to purchase credited service pursuant to  
34 section 38-743, 38-744 or 38-745 divided by three.

35 (e) If the member has retired one or more times from ASRS, the average  
36 monthly compensation that was used for calculating the member's last pension  
37 benefit times twelve.

38 11. "Early retirement" means retirement before a member's normal  
39 retirement date after five years of total credited service and attainment of  
40 age fifty.

41 12. "Effective date" means July 1, 1970, except with respect to  
42 employers and members whose contributions to ASRS commence thereafter, the  
43 effective date of their membership in ASRS is as specified in the applicable  
44 joinder agreement.

- 1        13. "Employer" means:  
2        (a) This state.  
3        (b) Participating political subdivisions.  
4        (c) Participating political subdivision entities.  
5        14. "Employer contributions" means all amounts paid into ASRS by an  
6 employer on behalf of a member.  
7        15. "Fiscal year" means the period from July 1 of any year to June 30  
8 of the following year.  
9        16. "Inactive member" means a member who previously made contributions  
10 to ASRS and who satisfies each of the following:  
11        (a) Has not retired.  
12        (b) Is not eligible for active membership in ASRS.  
13        (c) Is not currently making contributions to ASRS.  
14        (d) Has not withdrawn contributions from ASRS.  
15        17. "Interest" means the assumed actuarial investment earnings rate  
16 approved by the board.  
17        18. "Internal revenue code" means the United States internal revenue  
18 code of 1986, as amended.  
19        19. "Investment management" means the persons, companies, banks,  
20 insurance company investment funds, mutual fund companies, management or any  
21 combinations of those entities that are appointed by ASRS and that have  
22 responsibility and authority for investment of the monies of ASRS.  
23        20. "Late retirement" means retirement after normal retirement.  
24        21. "Leave of absence" means any unpaid leave authorized by the  
25 employer, including leaves authorized for sickness or disability or to pursue  
26 education or training.  
27        22. "Life annuity" means equal monthly installments payable during the  
28 member's lifetime after retirement.  
29        23. "Member":  
30        (a) Means any employee of an employer on the effective date.  
31        (b) Means all employees of an employer who are eligible for membership  
32 pursuant to section 38-727 and who are engaged to work at least twenty weeks  
33 in each fiscal year and at least twenty hours each week.  
34        (c) Means any person receiving a benefit under ASRS.  
35        (d) Means any person who is a former active member of ASRS and who has  
36 not withdrawn contributions from ASRS pursuant to section 38-740.  
37        (e) Does not include any employee of an employer who is otherwise  
38 eligible pursuant to this article and who begins service in a limited  
39 appointment for not more than eighteen months on or after July 1, 1979. If  
40 the employment exceeds eighteen months, the employee shall be covered by ASRS  
41 as of the beginning of the nineteenth month of employment. In order to be  
42 excluded under this subdivision, classifications of employees designated by  
43 employers as limited appointments must be approved by the director.

1 (f) Does not include any leased employee. For the purposes of section  
2 414(n) of the internal revenue code, "leased employee" means an individual  
3 who:

4 (i) Is not otherwise an employee of an employer.

5 (ii) Pursuant to a leasing agreement between the employer and another  
6 person, performs services for the employer on a substantially full-time basis  
7 for at least one year.

8 (iii) Performs services under the primary direction or control of the  
9 employer.

10 24. "Member contributions" means all amounts paid to ASRS by a member.

11 25. "Normal costs" means the sum of the individual normal costs for all  
12 active members for each fiscal year. The normal cost for an individual  
13 active member is the cost that is assigned to the fiscal year using the  
14 projected unit credit method.

15 26. "Normal retirement age" means the age at which a member reaches the  
16 member's normal retirement date.

17 27. "Normal retirement date" means the earliest of the following:

18 (a) A member's sixty-fifth birthday.

19 (b) A member's sixty-second birthday and completion of at least ten  
20 years of credited service.

21 (c) The first day that the sum of a member's age and years of total  
22 credited service equals eighty.

23 28. "Political subdivision" means any political subdivision of this  
24 state and includes a political subdivision entity.

25 29. "Political subdivision entity" means an entity:

26 (a) That is located in this state.

27 (b) That is created in whole or in part by political subdivisions,  
28 including instrumentalities of political subdivisions.

29 (c) Where a majority of the membership of the entity is composed of  
30 political subdivisions.

31 (d) Whose primary purpose is the performance of a government related  
32 service.

33 30. "Retired member" means a member who is receiving retirement  
34 benefits pursuant to this article.

35 31. "Service year" means fiscal year, except that:

36 (a) If the normal work year required of a member is less than the full  
37 fiscal year but is for a period of at least nine months, the service year is  
38 the normal work year.

39 (b) For a salaried member employed on a contract basis under one  
40 contract, or two or more consecutive contracts, for a total period of at  
41 least nine months, the service year is the total period of the contract or  
42 consecutive contracts.

43 (c) In determining average monthly compensation pursuant to paragraph  
44 5 of this section, the service year is considered to be twelve months of  
45 compensation.

1       32. "State" means this state, including any department, office, board,  
2 commission, agency, institution or other instrumentality of this state.

3       33. "Vested" means that a member is eligible to receive a future  
4 retirement benefit.

5       Sec. 2. Section 38-714, Arizona Revised Statutes, is amended to read:  
6 38-714. Powers and duties of ASRS and board

7       A. ASRS shall have the powers and privileges of a corporation, shall  
8 have an official seal and shall transact all business in the name "Arizona  
9 state retirement system", and in that name may sue and be sued.

10       B. The board is responsible for supervising the administration of this  
11 article by the director of ASRS, except the investment powers and duties of  
12 investment management.

13       C. The board is responsible for the performance of fiduciary duties  
14 and other responsibilities required to preserve and protect the retirement  
15 trust fund established by section 38-712.

16       D. The board shall:

17       1. Prescribe investment goals, objectives and policies that are  
18 consistent with the purposes of this article and the limitations and standard  
19 of care prescribed in section 38-719, subsection B.

20       2. Allocate assets to meet the investment goals, objectives and  
21 policies it prescribes.

22       3. Adopt specific policy directives for the guidance of investment  
23 management.

24       4. Meet with each investment manager at least annually or at the  
25 request of a board member to review the investment manager's performance and  
26 the investment manager's attainment of and adherence to the board's  
27 investment goals, objectives and policies.

28       E. The board shall not advocate for or against legislation providing  
29 for benefit modifications, except that the board shall provide technical and  
30 administrative information regarding the impact of benefit modification  
31 legislation.

32       F. The board may:

33       1. Determine the rights, benefits or obligations of any person under  
34 this article and afford any person dissatisfied with a determination a  
35 hearing on the determination.

36       2. Determine the amount, manner and time of payment of any benefits  
37 under this article.

38       3. Assign, transfer and deliver all stocks, bonds and other  
39 investments owned by ASRS if it is not inconsistent with or does not in any  
40 way contravene the authority of investment management for investing,  
41 reinvesting, purchasing and selling stocks, bonds and other investments.

42       4. Recommend amendments to this article and articles 2.1 and 7 of this  
43 chapter that are required for efficient and effective administration.

44       5. Adopt, amend or repeal rules for the administration of THE PLAN,  
45 this article AND ARTICLES 2.1 AND 7 OF THIS CHAPTER.

1           6. Prescribe investment diversification programs and assign investment  
2 management responsibilities regarding those programs as it deems appropriate  
3 to achieve its investment goals, objectives and policies.

4           G. The board shall submit to the governor and legislature for each  
5 fiscal year no later than eight months after the close of the fiscal year a  
6 report of its operations and the operations of ASRS. The report shall follow  
7 generally accepted accounting principles and generally accepted financial  
8 reporting standards and shall include:

9           1. A report on an actuarial valuation of ASRS assets and liabilities.

10           2. Any other statistical and financial data that may be necessary for  
11 the proper understanding of the financial condition of ASRS and the results  
12 of board operations.

13           3. On request of the governor or the legislature, a list of  
14 investments owned. This list shall be provided in electronic format.

15           H. The board shall:

16           1. Prepare and publish a synopsis of the annual report for the  
17 information of ASRS members.

18           2. Contract for a study of the mortality, disability, service and  
19 other experiences of the members and employers participating in ASRS. The  
20 study shall be conducted for fiscal year 1990-1991 and for at least every  
21 fifth fiscal year thereafter. A report of the study shall be completed  
22 within eight months of the close of the applicable fiscal year and shall be  
23 submitted to the governor and the legislature.

24           3. Conduct an annual actuarial valuation of ASRS assets and  
25 liabilities.

26           I. The auditor general may make an annual audit of ASRS and transmit  
27 the results to the governor and the legislature.

28           Sec. 3. Section 38-742, Arizona Revised Statutes, is amended to read:  
29 38-742. Reinstatement

30           A. If an active member who received a return of contributions on  
31 termination of employment and by receipt of those contributions forfeited  
32 credited service earned on that employment, as provided in section 38-740,  
33 subsection A, is subsequently reemployed by an employer, the member's service  
34 shall be credited only from the date the member's most recent reemployment  
35 period commenced.

36           B. Notwithstanding subsection A of this section, the member may  
37 redeposit the amount of the contributions the member received at the time of  
38 the member's separation from service, with interest on that amount to the  
39 date of redeposit at the interest rate assumption approved by the board for  
40 actuarial equivalency. On satisfaction of this obligation, the member's  
41 service credits acquired by the previous employment shall be reinstated. THE  
42 MEMBER IS SUBJECT TO THE BENEFITS AND DUTIES IN EFFECT AT THE TIME OF THE  
43 MEMBER'S MOST RECENT REEMPLOYMENT EXCEPT AS PROVIDED IN SECTION 38-711,  
44 PARAGRAPH 5, SUBDIVISION (a). If a member redeposits less than the amount



1 required under this subsection, ASRS shall proportionately reduce the  
2 member's reinstated service credits.

3 C. A member who is receiving benefits pursuant to section 38-797.07  
4 and who received a return of contributions on termination of employment and  
5 by receipt of those contributions forfeited credited service earned on that  
6 employment, as provided in section 38-740, subsection A, may redeposit the  
7 amount of the contributions the member received at the time of the member's  
8 previous separation from service, with interest on that amount to the date of  
9 redeposit at the interest rate assumption approved by the board for actuarial  
10 equivalency. On redeposit of the contributions and interest, the member's  
11 service ~~credit~~ CREDITS acquired by the previous employment shall be  
12 reinstated. THE MEMBER IS SUBJECT TO THE BENEFITS AND DUTIES IN EFFECT AT  
13 THE TIME OF THE MEMBER'S MOST RECENT REEMPLOYMENT EXCEPT AS PROVIDED IN  
14 SECTION 38-711, PARAGRAPH 5, SUBDIVISION (a). If a member redeposits less  
15 than the amount required under this subsection, ASRS shall proportionately  
16 reduce the member's reinstated service credits.

17 Sec. 4. Section 38-765, Arizona Revised Statutes, is amended to read:

18 38-765. Errors; benefit recomputation

19 If any change or error in the records results in any member or  
20 beneficiary receiving from ASRS more or less than the member or beneficiary  
21 would have been entitled to receive if the records had been correct, ~~the~~  
22 ~~board~~ ASRS shall correct the error and as far as practicable shall adjust the  
23 payments in a manner so that the actuarial equivalent of the benefit to which  
24 the member or beneficiary was correctly entitled is paid. ~~The board~~ ASRS  
25 shall correct any change or error and shall pay the appropriate monies to a  
26 member or beneficiary or shall recover monies from the member or beneficiary  
27 if the member or beneficiary is overpaid. ASRS SHALL RECOVER MONIES BY  
28 REDUCING ANY BENEFIT THAT IS OTHERWISE PAYABLE BY ASRS OR THE LTD PROGRAM  
29 ESTABLISHED BY ARTICLE 2.1 OF THIS CHAPTER TO AN ACTIVE, INACTIVE, DISABLED  
30 OR RETIRED MEMBER, SURVIVOR, CONTINGENT ANNUITANT, BENEFICIARY OR ALTERNATE  
31 PAYEE.

32 Sec. 5. Appropriation; Arizona state retirement system;  
33 exemption

34 A. The sum of \$763,319 is appropriated from the Arizona state  
35 retirement system administration account in fiscal year 2008-2009 to the  
36 Arizona state retirement system for the administrative implementation of this  
37 act.

38 B. The appropriation made in subsection A of this section is exempt  
39 from the provisions of section 35-190, Arizona Revised Statutes, relating to  
40 lapsing of appropriations.